

# Calendar No. 1957

86TH CONGRESS }  
2d Session }

SENATE }

REPORT  
No. 1887

## EDOUARD E. PERRET

AUGUST 22, 1960.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H.R. 11460]

The Committee on the Judiciary, to which was referred the bill (H.R. 11460) for the relief of Edouard E. Perret, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to relieve Edouard E. Perret, of Dayton, Ohio, of all liability to repay to the United States the sum of \$539.12 erroneously paid to him by the Department of the Air Force as a salary increase in 1958.

#### STATEMENT

The Department of the Air Force is opposed to the enactment of H.R. 11460. The Comptroller General of the United States advises that the question whether the facts and circumstances in this case warrant the enactment of relief legislation is a matter of policy for determination by the Congress.

The facts and conclusions regarding this claim are contained in House Report No. 1969 on H.R. 11460, and are as follows:

The claimant, a Swiss national, was employed under a personal service contract under date of September 21, 1957, effective February 1, 1958, at \$9,635 per annum. Upon his arrival at Wright-Patterson Air Force Base on February 17, 1958,

he was assigned as a mathematician in the Aeronautical Research Laboratory in the Wright Air Development Division.

From time to time, as indicated in the report of the Department of the Air Force attached hereto and made a part hereof, his salary was erroneously increased. The increases were all approved as seemingly proper and in good order and so received by the claimant. Inasmuch as the claimant's initial contract did not contain a general-increase clause the increases were not authorized.

The claimant supports his wife and three sons, one of whom is attending school in Switzerland because the cost of living and education is not so high in that country. He is also burdened with the support of an aged and crippled mother. The committee is of the opinion that an unfair burden will be cast upon the claimant in requiring him to now repay the results of an administrative error discovered only after a General Accounting audit conducted at Dayton, Ohio, during 1960, and, therefore, recommends that this legislation be favorably considered.

The committee concurs in the action of the House of Representatives on this legislation and, therefore, recommends that the bill (H.R. 11460) be considered favorably.

Attached hereto and made a part hereof are the reports submitted by the Department of the Air Force and the Comptroller General of the United States on H.R. 11460.

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DEPARTMENT OF THE AIR FORCE,  
OFFICE OF THE SECRETARY,  
Washington, May 27, 1960.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Air Force with respect to H.R. 11460, 86th Congress, a bill for the relief of Edouard E. Perret.

The purpose of H.R. 11460 is to relieve Mr. Edouard E. Perret of all liability to repay to the United States the sum of \$544.12 which was erroneously paid to him by the Department of the Air Force as a salary increase in 1958. The records of Wright Air Development Division at which this individual is employed indicate his name to be Edouard E. Perret-Gentil.

Mr. Perret-Gentil, a Swiss national, was employed under a personal service contract, dated September 21, 1957, at \$9,635 per annum, the equivalent of GS-13, step 4. The effective date of his employment was February 1, 1958. Mr. Perret-Gentil arrived at Wright-Patterson Air Force Base on February 17, 1958, and was assigned as a mathematician in the Aeronautical Research Laboratory in the Wright Air Development Division.

On February 20, 1958, Mr. Perret-Gentil's salary was erroneously increased to the equivalent of the top step of grade GS-13 (\$10,065 per annum) effective retroactively to February 12, 1958. The author-

ity cited for the increase was Civil Service Departmental Circular No. 793, Supplement No. 33, dated December 9, 1957.

In July 1958, Mr. Perret-Gentil's compensation was erroneously increased to \$11,090 per annum, effective retroactively to February 12, 1958. This adjustment was processed in accordance with the provisions of the Federal Employees Salary Increase Act of 1958 (Public Law 85-462).

Mr. Perret-Gentil, like other personal service contract employees, was paid a rate of compensation which is comparable to that paid to employees serving in similar Classification Act positions. Such employees are entitled to any pay adjustments given to Classification Act employees serving in comparable positions, provided there is a general-increase clause written into the Department of Defense contract of employment. The initial contract under which Mr. Perret-Gentil served until July 1, 1958, did not contain such a clause. Therefore, he was entitled to receive only the rate of compensation stated in the initial contract (\$9,635 per annum). Unfortunately the increases were approved without verifying the nature of the controlling contract, and Mr. Perret-Gentil received an overpayment of \$544.12, representing the difference between \$9,635 per annum and \$11,090 per annum for the period February 12, through June 30, 1958.

The error was discovered in a General Accounting Office audit conducted at Dayton, Ohio, during 1960. Mr. Perret-Gentil has been directed to refund the overpayment to the U.S. Government.

On January 29, 1959, the Comptroller General ruled (38 Comp. Gen. 525) in a similar case as follows:

"Experts and consultants who are employed under personal-service contracts which stipulate the rate of pay to be received but do not contain any salary adjustment provision are bound by the rate of pay stipulated and are not entitled to the retroactive salary increase authorized in section 7 of the Federal Employees Salary Increase Act of 1958, and there is no authority in the agents and officers of the Government to modify or waive the contracts to grant retroactive salary increases without a compensatory benefit to the Government."

It is recognized that the erroneous action by an administrative official of the Department of the Air Force resulted in the overpayments of salary to Mr. Perret-Gentil and that collection of such overpayments might work a hardship on him. However, the Department of the Air Force considers that Mr. Perret-Gentil will suffer no greater hardship than that which many other individuals have had to withstand under similar circumstances. Further, the Department feels that enactment of this proposal would be highly discriminatory against all other individuals who have been required to refund overpayments in the past and would make the collection of such overpayments more difficult in the future. Finally, Mr. Perret-Gentil has received a sum of money to which he has no entitlement and which he should be required to refund. Therefore, the Department of the Air Force is opposed to the enactment of H.R. 11460.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

JAMES P. GOODE,  
*Deputy for Manpower, Personnel and Organization.*

## COMPTROLLER GENERAL OF THE UNITED STATES,

*Washington, May 6, 1960.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Your letter of April 5, 1960, acknowledged April 6, requests our report upon H.R. 11460 for the relief of Edouard E. Perret.

Mr. Perret, the beneficiary in the bill, was employed by the Department of Defense by contract—contract No. DA-91-501-USAREUR-346. While the contract is in the name of Edouard E. Perret-Gentil, we note that the name of the beneficiary in the bill is Edouard E. Perret.

The contract provided for the payment of compensation at the rate of \$9,635 per annum and contained no provision for increasing that rate in the event the compensation of other employees performing similar duties was increased by statute or by lawful regulations. On February 20, 1958, the beneficiary's rate of compensation was changed administratively to \$10,065 per annum, retroactively effective to February 12. This change was based upon Civil Service Commission Departmental Circular No. 793, Supplement 33, dated December 9, 1957, which increased the minimum compensation payable to certain enumerated Classification Act positions. In July 1958, the contractor's rate of compensation was increased to \$11,090 per annum, retroactively effective February 12, 1958, upon the basis of the retroactive provisions of the Federal Employees Salary Increase Act of 1958 (72 Stat. 203).

In our audit we questioned the administrative action increasing the compensation of Mr. Perret-Gentil above the \$9,635 per annum rate specified in the contract. Since there was no provision in such contract providing for upward adjustment of the contract rate based upon general pay increases authorized by statute or lawful regulations, the administrative action was unauthorized.

We have been informed by our regional office that the total amount of the overpayment made to the beneficiary named in the bill is \$554.12 rather than \$544.12 as stated in the bill and that the beneficiary has refunded \$15 of such overpayment, leaving a balance due the United States of \$539.12. If it is the intent of the bill to authorize payment to the beneficiary of the \$15 he has refunded, we suggest that the bill be amended to specifically authorize such refund.

Concerning the merits of the proposed legislation, we ordinarily do not favor relief in an individual case such as here involved, irrespective of the employee's lack of fault in the matter, because we believe such legislation is preferential in nature. However, the question whether the facts and circumstances in this case warrant the enactment of relief legislation is a matter of policy for determination by the Congress.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*